

IN THE UNITED STATES PATENT & TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Varsity Spirit Corporation,
Opposer

v.

NSG Corporation,
Applicant

02-19-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #30

Opposition No. 91152530

TRADEMARK FEE PROCESS
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US PATENT & TRADEMARK OFFICE

**STIPULATION AND ORDER PROTECTING AGAINST DISCLOSURE
OF TRADE SECRETS AND OTHER CONFIDENTIAL MATERIAL
(STIPULATED PROTECTIVE ORDER)**

THIS MATTER having been opened to the Board by agreement between Opposer and Applicant, through their respective counsel, for the purpose of seeking protection from disclosure of trade secrets and other confidential commercial information, under FED. R. CIV. P. 26(c)(7), and pursuant to TBMP §§ 416.02, and 416.04,

IT IS HEREBY ORDERED as follows:

1. As used herein, the term "confidential material," shall refer to any answer, document, article, thing, or any portion, or portions thereof, which contain information that comprises a trade secret, or other confidential research, development, or commercial information, under FED. R. CIV. P. 26(c)(7). All material identified as "confidential" shall be used only for purposes of this action, and shall not be disclosed to any third party not qualified to receive it under Paragraph 5 hereof.

2. If any answer given, or document, article, or thing produced in response to a discovery request, is believed to contain confidential material, the responding party may mark or designate such answer, document, article, or thing (hereinafter, sometimes referred to as "item") "confidential," and any item so marked or designated shall thereafter be handled in accordance

with Paragraphs 3 through 11 hereof. The designation of any answer, document, article or thing as "confidential," shall constitute a representation that counsel, in good faith, believes the item so designated contains confidential material as defined in Paragraph 1 hereof.

3. Any party may designate any item as "confidential" by placing on or affixing to such item, in a manner that will not interfere with the legibility thereof, a notice identifying the item as confidential, or, where such placement or affixation is not practicable, by notifying counsel for the opposing party in writing, at the time such item is produced, that the item is a "confidential" item under the terms of this *Stipulated Protective Order*.

4. The producing party shall retain the original of any item marked "confidential." However, counsel for the other party may examine the original, and the copy or specimen furnished by the producing party shall have the same force and effect as the original thereof, subject to correction, if error be shown. Unless otherwise expressly indicated, the title of a "confidential" item, or absence of a title; the date and identity of the writer and recipient of a confidential document, and/or any material which incorporates, in whole or in part, any such designated confidential item, shall be deemed "confidential."

5. Subject to Paragraphs 7, 8 and 9 hereof, "confidential" items shall be disclosed to counsel for the parties hereto (hereinafter sometimes "counsel") and to "persons assisting such counsel," as defined herein. All disclosures shall conform with the terms of Paragraph 6 hereof. As used herein, "persons assisting such counsel," shall mean clerks, paralegals, and secretaries in the regular employ of counsel; stenographic personnel and outside contractors engaged to copy, index, sort, or manage, the storage and retrieval of discovery materials; and consultants not otherwise in the employ of the parties, who need access to such confidential items, to assist counsel in this case. Further, if any such consultant is involved in a business related to that of

the party producing the confidential material, the party proposing to disclose confidential material to same, shall, prior to disclosing the confidential material, submit a statement to counsel for the opposing party, identifying the consultant, and describing the relevant employment thereof. Unless counsel for the opposing party notifies counsel of its objection, and the grounds therefor, with respect to any consultant proposed, within ten (10) days after submission of the statement referred to above, counsel may disclose confidential material to such person. In the event a party objects to a consultant as provided in this Paragraph, the party proposing the consultant shall have the right, by noticed motion, to challenge the objection and have the Board determine whether such consultant may have access to confidential material, and the proposed consultant shall not receive confidential material until such time as the Board so determines.

6. Counsel, before disclosing "confidential" material to "persons assisting such counsel," as defined in Paragraph 5, shall first give a copy of this *Stipulated Protective Order* to such persons, and receive an acknowledgment, in writing, that such persons have read this *Stipulated Protective Order*; are familiar with the provisions hereof; and agree to abide hereby. Counsel shall make disclosures of such "confidential" material only to persons specified in Paragraph 5, who have seen this *Stipulated Protective Order* and executed a written acknowledgment.

7. In the event any "confidential" item(s) are included with any paper filed with the Board, such items shall be filed with instructions to the Clerk, that, except as otherwise provided by the Board, they are to be sealed pursuant to this *Stipulated Protective Order*, and are not to be disclosed to any person, other than the Board, and counsel of record for the parties to this action.

8. In the event any item embodying "confidential" material is used in a deposition, the reporter shall be instructed that, pursuant to this *Stipulated Protective Order*, the deposition and "confidential" deposition exhibits, if retained by the reporter, shall be retained under seal, and if filed with the Board, shall be filed under seal, with instructions to the Clerk, as set forth in Paragraph 7, and the reporter shall be further instructed not to furnish copies of any such material, or disclose the content thereof, to any persons other than counsel of record in this action.

9. If counsel wishes to disclose "confidential" material produced by the other party, to witnesses, and/or potential witnesses, other than persons identified in Paragraph 5, counsel may do so only with the prior written consent of the other party, under terms and conditions agreed to by the parties. If at a hearing in connection with any motion, other proceeding, or at trial, a party intends to offer into evidence, "confidential" material produced by the other party, said party shall inform the other party five (5) days in advance of the hearing or other proceeding or trial, so that the other party may take such steps as it deems reasonably necessary to preserve the confidentiality of such material.

10. With respect to any item or portion thereof which has been designated as "confidential," either party may, at any time, serve notice of non-acquiescence in such designation, and move for an order to vacate or modify the provisions in Paragraphs 2 through 9 hereof, as to such items, or portion(s) thereof. If no such motion is served, the item or portion(s) in question shall be entitled to the protection provided in Paragraphs 2 through 9. If either party should so move, the item or portion thereof in question shall continue to be classified as "confidential," until the motion is ruled upon by the Board and such ruling becomes a Final Order.

11. Upon final termination of this action, including any appeals, at the request of the producing party, the other party shall return all "confidential" material produced in this action, including copies, abstracts or summaries thereof, or documents containing information taken therefrom, but excluding materials which, in the judgment of counsel for the other party, comprise work-product material of said counsel. Upon express approval of the Board, after final termination of this action, said counsel will take such steps as the producing party may reasonably request, to ensure the continued protection of information contained in work-product material.

12. Nothing in this *Stipulated Protective Order* shall prevent, or otherwise restrict counsel from rendering advice to their clients, and, in the course thereof, relying generally on examination of confidential material; provided, however, that in rendering such advice, and otherwise communicating with such clients, counsel shall not make specific disclosure of any item so designated, except pursuant to the procedures of Paragraph 9.

13. Review of "confidential" material and item(s) by counsel or consultants shall not waive the confidentiality of such material or items, or objections to production.

14. The inadvertent, unintentional, or in camera disclosure of confidential material shall not, under any circumstances, be deemed a waiver, in whole or in part, of any party's claims of confidentiality.

15. The foregoing is without prejudice to the right of any party to apply to the Board for further protection or disclosure in any area of discovery.

By: _____

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 Butler, Snow, O'Mara, Stevens
 & Cannada, PLLC
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COUNSEL TO OPPOSER

By: _____

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COUNSEL TO APPLICANT

AGREED:

By: _____

Name: Greg Webb
 Title: Senior V.P.
 Varsity Spirit Corporation
 6745 Lenox Center Court, Suite 300
 Memphis, TN 38115

By: _____

Jerome T. Dilettuso, President
 NSG Corporation
 2010 Merritt Drive
 Garland, TX 75041

IT IS SO ORDERED, this ____ day of _____, 2003.

Trademark Trial and Appeal Board

TTAB

HAYNES AND BOONE, LLP

January 23, 2003

02-19-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #30

BY HAND

BOX TTAB NO FEE
Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Re: Varsity Spirit Corporation v. NSG Corporation
Opp. No. 91152530
Stipulated Protective Order
Our Ref.: 24561.63

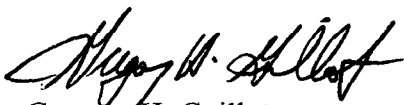
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Sir:

Enclosed, please find a *Stipulation and Order Protecting Against Disclosure of Trade Secrets and Other Confidential Material* (Stipulated Protective Order), in triplicate, for filing in the above-referenced proceeding. Additionally enclosed is an extra copy of this transmittal letter, for date-stamping and return to our courier service, Professional Express.

Should the Board have any questions concerning this matter, kindly direct them to the undersigned, counsel to NSG Corporation.

Sincerely,



Gregory H. Guillot
Direct Phone: 214.651.5258
Direct Fax: 214.200.0533
guillotg@haynesboone.com

Enclosures

cc: Grady Garrison, Esq. (counsel to Varsity Spirit Corporation)

Attorneys

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